IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8162 OF 2005

Shri Kanayalal Chetandas Jaisinghani . .. Petitioner.

vs.

Shri Chuharlal Chetandas Jaisinghani & Anr. .. Respondents.

Mr. K.C. Jaisinghani in person.

CORAM : S.U. KAMDAR, J.

DATE : 12th December, 2005.

P.C.:

. The present petition challenges the order dated 8.9.2005 passed below Exhibit 821 in RCS No. 332/2000 and another order dated 8.9.2005 passed below Exhibit 888 in RCS No. 332/2000.

2. The petitioner and the respondent no. 1 are the brothers and a suit is filed for specific performance of the agreement dated 12.5.1983. The said suit is pending. There is no dispute that the agreement is entered into by the petitioner and others in respect of Plot No. 55/A/2 admeasuring

2100 sq. ft. However, it is the case of the petitioner that the said agreement dated 12.5.1983 is not to be acted upon and in fact there is no plot existing of 55/A/2. In that behalf he has filed an application being Exhibit 821 for filing of demarcation plan by the plaintiff in support of this case that there are two plots 55/A and 55/A/1. The learned trial Court has rejected the application by holding that the plaintiff cannot be directed to produce the document and has given liberty to the petitioner to file a demarcation plan if he so desires.

3. In the application Exhibit 888, the petitioner has contended that since the plot is not in existence, the trial Court has no jurisdiction to entertain the suit for specific performance. I am of the opinion that both the applications being Exhibit 821 and Exhibit 888 are frivolous and bogus. The petitioner is appearing in person has contended that the suit for specific performance could not be permitted to be proceeded with because there is no plot in existence. In my opinion, the issue whether there is a plot in existence or not being Plot No. 55/A/2 can be determined only on the trial of the suit. Therefore, prima facie the respondent no. 1 has an agreement in his favour for a plot of land being plot no. 55/A/2 for 2100 sq. ft. Merely because of the contention of the petitioner that the

said agreement was not to be acted upon, the suit cannot be dismissed on the ground of either jurisdiction or on the ground that demarcation plan is not filed. In that light of the matter, I find no merit in the present petition to interfere with the orders passed by the trial Court. Both the orders both dated 8.9.2005 are upheld. Petition is dismissed accordingly. No order as to costs.